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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

YU LESEBERG, Plaintiff and Respondent, v. ROLAN FELD, Appellant.	B281905 (Los Angeles County Super. Ct. No. SS026368)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Erikson Law Group and David Alden Erikson, for Appellant.

Drinker Biddle & Reath, Sheldon Eisenberg, Erin E. McCracken for Plaintiff and Respondent.

INTRODUCTION

Law firm Yu Leseberg initiated arbitration proceedings to recover unpaid fees from client Rolan Feld. The parties disagreed about the scope of the fee agreement and related payments due; Feld also accused Yu Leseberg of unethical behavior. The arbitrator found largely in Yu Leseberg's favor, and awarded the firm most of the attorney fees it requested. Yu Leseberg petitioned to have the arbitration award confirmed in the trial court, and Feld opposed the petition. The court confirmed the arbitration award, and Feld appealed.

We affirm. The parties had a full and fair opportunity to address all of their claims before the arbitrator, the arbitrator addressed each of those claims, and Feld has not established any basis under Code of Civil Procedure section 1286.2 to vacate the arbitration award.

I. BACKGROUND

A. Yu Leseberg's representation

Feld is the only child of musician Marc Feld, professionally known as Marc Bolan (Bolan). Bolan was a British musician who created the band T-Rex, which was known for songs such as "Bang a Gong." Bolan died in a car accident in 1977, when Feld was two years old.

In April 2012, Feld hired Yu Leseberg to perform legal work "in connection with [Feld's] rights as the heir and successor in interest to the Estate of Marc Bolan/Marc Feld and intellectual property rights relating thereto." Some of Bolan's assets had been placed in overseas trusts, and part of Yu Leseberg's engagement was to attempt to recover assets from those trusts.

The parties entered into a contract, the Yu Fee Agreement, or YFA. The YFA stated that it "does not include any services [*sic*] litigation, securities, tax controversies, divorce, criminal matters, trademark or copyright litigation, and in the event you require such services, we shall enter into a fee agreement for such services at such time." The YFA included a ten percent contingency fee agreement. It also included an arbitration and attorney fee provision that stated in full, "Fee Disputes. Any dispute which arises under this agreement shall be submitted for binding arbitration in accordance with the procedures of the Los Angeles County Bar Association, or, if that organization declines to arbitrate the dispute, before the State Bar of California. In the event of a lawsuit between us, the prevailing party shall be entitled to recover their reasonable attorney's fees."

In December 2012, the parties modified the YFA and back-dated it to April 2012. The terms of the YFA remained the same, but the contingency fee was increased to twenty percent. Attorney Helen Yu later testified at the arbitration that the contingency fee was increased because the work for Feld "was a lot more volume and a lot more involved than we had originally anticipated it would be."

In June 2013, Yu determined that litigation would be required to recover certain rights from Essex Music International, Inc. and other companies (the Essex litigation). The parties engaged a litigation law firm, Gradstein Marzano, to assist with "services necessary to prosecute" the Essex litigation, and entered into another fee agreement, the Gradstein Fee Agreement or GFA. The GFA defined both Yu Leseberg and Gradstein Marzano as the "attorneys," and stated that the "Attorneys will be entitled to 33.3% of the Gross Recovery until

the 30th day before the first scheduled trial date," and 40 percent of the gross recovery thereafter. "Gross recovery" was defined as "the total amount recovered on [Feld's] behalf," including any amount of past damages recovered and "any future proceeds from the exploitation, sale or license" of Bolan's music recovered in the litigation. The Essex litigation settled in August 2014. As a result of that settlement, Feld recovered $600,000 and gained ownership of certain copyrights previously claimed by Essex.

Feld terminated Yu Leseberg's representation in May 2015.

B. Arbitration

In August 2015, Yu Leseberg initiated arbitration proceedings in the Attorney Client Arbitration Program with the Los Angeles County Bar Association (LACBA). Feld asserted that the Yu Fee Agreement's contingency fee provision did not comply with Business & Professions Code section 6147, subdivision (a)(4), which states that an "attorney who contracts to represent a client on a contingency fee basis" must include in the contract "[a] statement of the contingency fee rate that the client and attorney have agreed upon," and "a statement that the fee is not set by law but is negotiable between attorney and client." Subdivision (b) of that section states, "Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee." (Bus. & Prof. Code, § 6147, subd. (b).) Feld therefore exercised his discretion to render the agreement void.

Yu Leseberg then filed an amended claim seeking attorney fees under a quantum meruit theory. Yu Leseberg asserted that it did extensive work for Feld, including establishing and enforcing Feld's rights to trusts worth $31 million. Yu Leseberg

alleged that rights to Bolan's funds had eluded family members for years, and through extensive research and communication with attorneys in multiple countries, the firm came up with a legal strategy to secure Feld's rights. However, Feld and a "confidant" who had recently passed the bar exam "appropriated and implemented Yu Leseberg's strategy," gained access to the trusts, then refused to pay Yu Leseberg for its work. Yu Leseberg asked for the reasonable value of services provided, costs, and attorney fees.

Feld filed a counterclaim against Yu Leseberg and Yu individually. Feld alleged that after Yu Leseberg's representation had been terminated, it misappropriated revenue associated with Bolan's music. Feld also asserted that Yu Leseberg and Yu "collected unconscionable fees," which included "block billing, double billing, and excessive billing" that resulted in Feld receiving only 46 percent of the funds relating to Bolan's music. Feld contended that Yu Leseberg did very little work relating to a trust in the Cayman Islands, but nevertheless demanded 20 percent of trust distributions under the YFA. In addition, Feld alleged that Yu violated rules of professional conduct and breached her fiduciary duties. Feld sought disgorgement, restitution, and a declaration that he owed no further compensation to Yu Leseberg.

Feld also moved to dismiss the arbitration, citing a provision in the Gradstein Fee Agreement requiring any arbitration under that agreement be determined by a retired superior court judge. Feld asserted that a retired judge was not available in the LACBA program, and therefore it was not an appropriate forum. The arbitrator denied the motion, finding

that the arbitration was brought under the YFA, not the GFA, and therefore the GFA's requirements were not controlling.

The arbitration was conducted from April 18, 2016 to April 22, 2016. The parties submitted closing briefs thereafter. The arbitrator issued an interim award on May 27, 2016; the substance of the award is discussed below. Feld then moved to dismiss the arbitration, again arguing that the YFA was void and unenforceable, the GFA governed the dispute, and LACBA was not an appropriate forum under the GFA. Feld also contended that the arbitrator made inconsistent rulings in that he found that the GFA did not govern the dispute, but relied on the GFA in determining some of the fees owed to Yu Leseberg. The arbitrator denied Feld's motion.

C. The arbitrator's final ruling

The arbitrator issued a 25-page final ruling on July 5, 2016. In it, the arbitrator noted that Yu Leseberg was seeking the reasonable value of services under the YFA, and costs of arbitration including attorney fees. Feld had asserted affirmative defenses, including that Yu's actions were unethical. The arbitrator acknowledged that Feld's counterclaims included improper billing, unconscionable fees, and breaches of fiduciary duty and professional responsibility, and that Feld had requested damages, costs of arbitration, punitive damages, and "transfer of copyright ownership to Feld."

The award stated that following Feld's challenge to the YFA under Business and Professions Code section 6147, "the Yu Fee Agreement was voided and specifically" portions of the YFA relating to the calculation of attorney fees had been voided. The ruling continued, "Even though voided, the Yu Fee Agreement

remains relevant to define the scope of the services for which [Yu Leseberg] would be entitled to recover a reasonable fee."

The arbitrator noted that "[t]wo categories of services are in dispute: 'Trust work' and 'Essex litigation services.'" Feld had argued for a limited definition of "trust work," and asserted that any award of fees for that work must also be limited. The arbitrator rejected this argument, and held that all of Yu Leseberg's work related to the trusts was compensable.

For the Essex litigation services, the arbitrator found that the YFA explicitly stated that litigation services were not included in that agreement. "[O]nce it became clear that litigation would be undertaken to recover the renewal copyrights from Essex, the transactional services provided under the Yu Fee Agreement terminated and services by Yu became 'litigation services' under the Gradstein Fee Agreement." Thus, "all services related to the recovery of renewal copyrights from Essex after July 8, 2013 were services rendered under the Gradstein Fee Agreement and subject exclusively to the terms of that fee agreement." Yu Leseberg contended that once the Essex litigation concluded, fees for services relating to those copyrights reverted back to the parties' agreement under the YFA. The arbitrator rejected that argument, because the GFA included a provision as to "future proceeds" relating to those copyrights.

Turning to Feld's defenses, the arbitrator rejected Feld's contentions that Yu Leseberg forfeited its attorney fees by committing ethical violations. The arbitrator considered each of the actions that Feld alleged constituted an ethical violation, and concluded that "there were no ethical violations and that even if [Yu Leseberg's] conduct could be construed as an ethical violation, such violation was at most technical or unintentional

and did not result in damage to [Feld]. Accordingly, the recovery of fees is not precluded because of 'serious ethical misconduct' by" Yu Leseberg.

The written ruling stated that Feld "requests that the Gradstein Fee Agreement be declared unenforceable as to Yu (but not as to Gradstein) because the Gradstein Fee Agreement is unconscionable, is not in compliance with Rule 3-300 and because of Yu's 'serious ethical misconduct.'" The arbitrator pointed out that Feld "did not raise this issue in his Statement and Counterclaim or the Joint Statement" filed in the arbitration, and the arbitrator stated that he "has no authority to find the Gradstein Fee Agreement unenforceable since to do so would require that Gradstein Marzano be a party to this Arbitration." The arbitrator therefore "decline[d] to rule that the Gradstein Fee Agreement is unenforceable. . . ." The arbitrator stated, however, that the "interplay" of the YFA and GFA "in determining the allocation of Future Proceeds was an issue presented for determination."

The arbitrator did not determine the amount of recovery for services related to the Essex litigation, because that was covered by the GFA: "[W]hatever monies are received by either party pursuant to the Essex settlement under the Gradstein Fee Agreement are to be distributed exclusively and solely according to the Gradstein Fee Agreement." The arbitrator discussed the division of future proceeds relating to the Essex litigation under the GFA by referencing one arbitration exhibit "by way of illustration." The arbitrator rejected Yu Leseberg's claim to an additional 20 percent contingency fee in that exhibit, stating that "the sole deduction for attorneys' fees for Future Proceeds in this illustration" must be "as provided in the Gradstein Fee

Agreement" only. According to the GFA, of all future proceeds "net of actual out of pocket costs," one-third would constitute attorney fees and two-thirds would go to Feld. Of the one-third in attorney fees, Yu Leseberg would receive 75 percent, and Gradstein Marzano would receive 25 percent.

In calculating the fees for the trust work, the arbitrator considered the complexity of the matter and the time estimates Yu Leseberg had submitted for purposes of arbitration. The arbitrator rejected Yu Leseberg's contention that the fee award should be enhanced. The arbitrator found that the reasonable value of Yu Leseberg's services was $1,364,520.00.

The arbitrator also held that Yu Leseberg was entitled to attorney fees as the prevailing party pursuant to the YFA arbitration clause. He rejected Feld's claim that the attorney fee provision in the YFA was unenforceable because the contingency fee clause was void, finding that "arbitration clauses are severable and enforceable notwithstanding the voiding of the underlying contract. The invalidity of the arbitration clause itself was not raised by [Feld] and was not an issue in this arbitration." The arbitrator noted that the arbitration provision of the YFA stated that the parties agreed the prevailing party would be entitled to recover attorney fees. Because the arbitration clause was silent as to costs, the arbitrator held that each side should bear its own costs. Yu Leseberg was therefore entitled to $622,699.51 in attorney fees relating to the arbitration.

The arbitrator also found, "[Feld's] requests for a declaration that Feld is the owner and administrator of the copyrights are denied as moot in view of [Yu Leseberg's] admission that both the Yu Fee Agreement and the power of

attorney have been voided or otherwise revoked and all copyrights and other property interest returned to [Feld]."

D. Trial court proceedings

Yu Leseberg filed a petition to confirm the arbitration award. Feld filed a 70-page combined opposition and petition to vacate the award, along with a declaration and more than 1300 pages of exhibits. Feld repeated his reliance on the GFA's requirement that arbitration must be held before a retired judge, and asserted that the LACBA arbitration was therefore inappropriate. Feld also contended that the arbitrator "declined to decide" his counterclaims, the award was not "definite" and therefore could not be entered as a judgment, the arbitration provision of the YFA was void, and the arbitrator improperly decided issues governed by the GFA. Yu Leseberg opposed the petition to vacate.

After a hearing, the court took the matter under submission. In a written ruling, the court confirmed the award in full. The court noted that Feld's "petition raises nine arguments in support of his position that the arbitration award should be vacated. None of those arguments are persuasive." The court discussed each of Feld's arguments, and held that the award should be confirmed.

The court entered a judgment in favor of Yu Leseberg for $1,987,219.51 plus interest, with a blank space for attorney fees and costs related to the proceeding to confirm the arbitration award. Feld objected that the judgment did not include all of the arbitrator's findings. The court filed a corrected judgment that included each of the arbitrator's findings as written in the final arbitration award.

Feld timely appealed. While this appeal was pending, the trial court filed an amended judgment awarding Yu Leseberg interest and attorney fees relating to the trial court proceeding to confirm the arbitration award.

II. DISCUSSION

"We review de novo the trial court's order confirming the arbitration award." (*Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1435.) "The scope of judicial review of arbitration awards is extremely narrow because of the strong public policy in favor of arbitration and according finality to arbitration awards." (*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 33 (*Ahdout*).) Thus, "an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 6 (*Moncharsh*).) "However, Code of Civil Procedure section 1286.2 provides limited exceptions to this general rule."[1] (*Ahdout*, *supra*, 213 Cal.App.4th at p. 33.)

Feld relies on section 1286.2, subdivision (a)(5) as the sole statutory basis for challenging the award. That section allows a court to vacate an award when "[t]he rights of the party were substantially prejudiced . . . by other conduct of the arbitrators contrary to the provisions of this title." Feld states that the arbitrator erred by failing to follow section 1283.4, which states that an arbitration award "shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy."

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[1]All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

"[W]here the record shows that an issue has been submitted to an arbitrator and that he totally failed to consider it, such failure may constitute 'other conduct of the arbitrators contrary to the provisions of this title' justifying vacation of the award under section 1286.2." (*Rodrigues v. Keller* (1980) 113 Cal.App.3d 838, 841 (*Rodrigues*).) When an arbitration award is challenged on this basis, "it is presumed that all issues submitted for decision have been passed on and resolved, and the burden of proving otherwise is upon the party challenging the award." (*Id.* at p. 842.) In addition, "it is for the arbitrators to determine what issues are 'necessary' to the ultimate decision." (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 372; see also *Rosenquist v. Haralambides* (1987) 192 Cal.App.3d 62, 68 ["The determination of which issues are actually necessary to the ultimate decision is a question of fact to be resolved by the arbitrator."].)

A. Enforceability of the arbitration provision in the Yu Fee Agreement

Feld contends that the arbitration award must be vacated because the entire YFA, including the arbitration provision, is void, and therefore the YFA could not serve as an appropriate basis for the arbitrator's jurisdiction. Because this argument affects the overall basis for the arbitration award, we address it first.

As noted above, the YFA's contingency fee provision did not include "a statement that the fee is not set by law but is negotiable between attorney and client" as required by Business and Professions Code section 6147 (section 6147), subdivision (a)(4). Subdivision (b) of that section states that "[f]ailure to comply with any provision of this section renders the agreement

voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee." Feld exercised his option to void the fee agreement, and thereafter Yu Leseberg sought fees under a quantum meruit theory.

Feld asserts that this violation of section 6147 nullified not only the contingency fee provision of the YFA, but voided the YFA in its entirety. In his reply brief on appeal, Feld argues that "an attorney such as Yu who violates the Rules of Professional Conduct and who enters into an illegitimate fee agreement with her client may not rely on an arbitration provision in the void fee agreement to pursue a fee claim." Feld contends that because the entire agreement was void, "any award stemming from such an arbitration is a nullity and may not be confirmed." Feld also states that he "challenges the entire Yu Fee Agreement, not a single provision. . . . As such, the arbitration provision in the Yu Fee Agreement is a nullity and the arbitrator never had authority to rule."

Yu Leseberg asserts that "Feld forfeited this argument by failing to raise it" before arbitration. Indeed, Feld specifically told the arbitrator that he was *not* asserting that the YFA was void. Feld sought to dismiss the LACBA arbitration on the basis that the GFA superseded the YFA, and in a letter supporting that request, Feld stated, "Feld does not claim the 2013 agreement [the GFA] was a novation, or that it replaced the 2012 agreement [the YFA], or that the 2012 agreement is somehow void. Rather, Feld claims only that the arbitration provision in the 2013 agreement supersedes its 2012 version" because the GFA's arbitration provision applied to "all disputes" between the parties to that contract.

Feld's motion was denied, and the arbitration proceeded. The arbitrator found in Yu Leseberg's favor in an interim award, which noted that all portions of the YFA relating to calculating attorney fees were void. After the interim award was issued, Feld filed a motion to dismiss and asserted, for the first time, that the YFA's arbitration provision was void due to Yu Leseberg's failure to comply with section 6147. The arbitrator rejected Feld's challenge in the final award, stating that "[t]he invalidity of the arbitration clause itself was not raised by [Feld] and was not an issue in this arbitration."

In his motion to vacate the award filed in the trial court, Feld asserted again that "[t]he Arbitrator lacked subject matter jurisdiction because the YFA was void." Feld reasoned that "because of Yu's improper conduct and breach of her statutory and professional responsibilities, the YFA was void and unenforceable as a matter of law."

Feld forfeited this claim by making it for the first time after the arbitration had been conducted. The Supreme Court in *Moncharsh* recognized that "if an otherwise enforceable arbitration agreement is contained in an illegal contract, a party may avoid arbitration altogether." (*Moncharsh, supra*, 3 Cal.4th at p. 29.) However, the issue must be raised prior to arbitration: "[W]e cannot permit a party to sit on his rights, content in the knowledge that should he suffer an adverse decision, he could then raise the illegality issue in a motion to vacate the arbitrator's award." (*Moncharsh, supra*, 3 Cal.4th at p. 30.) This is exactly the course of action Feld took here, by specifically telling the arbitrator that he was *not* asserting that the arbitration provision of the YFA was void, and then after an

adverse decision was reached, asserting that the YFA's arbitration provision *was* void.

Even if the argument had not been forfeited, Feld has not demonstrated that the entire YFA, including its arbitration provision, was void. In his opening brief on appeal, Feld argues that the YFA was void because "[h]aving been voided under Section 6147, the entire YFA, including the arbitration provision and the attorneys' fee provision, 'is no contract at all; it binds no one and is a mere nullity.' (*Fergus v. Songer* (2007) 150 Cal.App.4th 552, 573; B&P §6147.)" No additional reasoning or authority is articulated in support of this contention. *Fergus* says nothing about whether voiding a contingency fee agreement under section 6147 renders the remainder of the parties' contract void. In that case, an attorney fee agreement was similarly voided under section 6147, and after a jury trial, the attorney was awarded fees commensurate with the work performed. On appeal, the attorney argued that the jury should have been instructed regarding the nature of contingency fee agreements: "'It is essential that the contingent nature of the engagement be included as a factor in setting a reasonable fee because that is the only manner by which to allow for the broad range of economic considerations that can be crucial to a reasonable outcome.' " (*Fergus, supra*, 150 Cal.App.4th at p. 573.) The Court of Appeal rejected this argument, stating, "Where, as here, a client exercises his right to void a contingency fee agreement, section 6147 does not permit the trier of fact to consider the contingent nature of the fee arrangement in determining a reasonable fee. If the contingency fee agreement is void, there is no contingency fee arrangement." (*Fergus*, 150 Cal.App.4th at p. 573.) The *Fergus* court did not hold that the attorney was not entitled to fees or

that other aspects of the fee agreement were void. Thus, *Fergus* does not support Feld's argument that the YFA was void in its entirety.

In his reply brief, Feld expands his argument, asserting that "an attorney such as Yu who violates the Rules of Professional Conduct and who enters into an illegitimate fee agreement with her client may not rely on an arbitration provision in the void fee agreement to pursue a fee claim." He asserts that the Supreme Court's ruling in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59 (*Sheppard Mullin*) provided "clarifications of law [that] have a huge effect on several of the key issues at play in this appeal." Because *Sheppard Mullin* was published shortly before Feld's reply brief was filed, we invited Yu Leseberg to comment on the impact of the *Sheppard Mullin* decision in a supplemental brief, and allowed Feld to reply to that supplemental brief. After considering both parties' positions, we find that the reasoning of *Sheppard Mullin* is not applicable here.

In *Sheppard Mullin*, a client retained a law firm to represent it in a large litigation; the law firm failed to disclose that one of the opposing parties in that litigation was a longtime client. (*Sheppard Mullin, supra*, 6 Cal.5th at pp. 69-70.) The firm was later disqualified from the new client's legal action as a result of the conflict of interest. (*Id.* at p. 70.) The client and firm sued each other; the firm sought unpaid attorney fees, and the client sought disgorgement of fees. (*Id.* at pp. 70-71.) The client argued the entire contract, including the arbitration clause, was void in light of the law firm's breach of the Rules of Professional Conduct in the formation of the contract. The trial court rejected this argument, the parties proceeded to arbitration,

and the client reiterated its challenge to the entire contract on appeal.

The Supreme Court noted that "a contract or transaction involving attorneys may be declared unenforceable for violation of the Rules of Professional Conduct, the set of binding rules governing the ethical practice of law in the State of California." (*Sheppard Mullin, supra*, 6 Cal.5th at p. 73.) Thus, "an attorney contract that *has as its object* conduct constituting a violation of the Rules of Professional Conduct is contrary to the public policy of this state and is therefore unenforceable." (*Id*. at p. 74 [emphasis added].) As a result, "an agreement to arbitrate is invalid and unenforceable if it is made as part of a contract that is invalid and unenforceable because it violates public policy." (*Id*. at pp. 78-79.) The Court found that the firm's "unconsented-to conflict of interest affected the whole of its engagement agreement with [the client], rendering it unenforceable in its entirety." (*Id*. at p. 81)

Sheppard Mullin does not apply here because the YFA as a whole did not violate the Rules of Professional Conduct or other public policy. Although the language of the contingency fee provision did not meet the requirements of section 6147, this error affected only the calculation of attorney fees for Yu Leseberg's work. This is not akin to the situation in *Sheppard Mullin*, where the very object of the contract—representation in a particular action and the accompanying attorney-client duty of loyalty—was affected by the law firm's failure to disclose the conflict. As the Supreme Court explicitly stated in *Sheppard Mullin*, "[T]he case law does not establish, nor do we today hold, that an attorney-services contract may be declared illegal in its entirety simply because it contains a provision that conflicts with

an attorney's obligations under the Rules of Professional Conduct." (*Sheppard Mullin, supra*, 6 Cal.5th at p. 79.) The *Sheppard Mullin* Court also reiterated the longstanding rule that "a claim that a single provision of a contract is illegal ordinarily has no bearing on the validity of the parties' agreement to arbitrate." (*Sheppard Mullin, supra*, 6 Cal.5th at p. 78; see also *Moncharsh, supra*, 3 Cal.4th 1, 30 ["[W]hen—as here—the alleged illegality goes to only a portion of the contract (that does not include the arbitration agreement), the entire controversy, including the issue of illegality, remains arbitrable."].)

Feld has therefore not shown that the arbitrator or the trial court erred in finding that the voided fee provision in the YFA did not void the entirety of the contract, including the arbitration clause. We therefore turn to the remainder of Feld's contentions on appeal.

B. The scope of the trial court's review

Again citing *Sheppard Mullin*, Feld asserts that the trial court should have employed a more rigorous standard of review to ensure the award was not in violation of public policy. Feld calls this the "statutory rights/public policy exception to arbitral finality" and states that it is "well-settled" in the law. He contends that the arbitration award "contravened Feld's statutory rights designed to protect clients against unscrupulous lawyers, and related public policy." Feld contends that Yu engaged in misconduct while she represented him, such as creating false billing invoices and forging Feld's signature.

In support of his argument, Feld also cites *Ahdout, supra,* 213 Cal.App.4th 21, which involved an arbitration relating to the development of a condominium project. The landowners asserted that the contractor hired to work on the project was not licensed,

and therefore was required to disgorge all fees paid to it. (*Id*. at p. 24; see also Bus. & Prof. Code 7031.) The arbitrator rejected the landowner's claim, and the trial court held that the decision was not reviewable. (*Ahdout, supra*, 213 Cal.App.4th at p. 24.) The Court of Appeal reversed, holding, "Because section 7031 constitutes an explicit legislative expression of public policy regarding unlicensed contractors, the general prohibition of judicial review of arbitration awards does not apply." (*Id*. at p. 38.) The court continued, "[T]he trial court should have conducted a de novo review of the evidence to determine whether disgorgement of compensation for [the contractor's] construction work was required by section 7031." (*Id*. at p. 39.)

Feld also cites *Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665 (*Pearson Dental*) and *Richey v. AutoNation, Inc*. (2015) 60 Cal.4th 909 (*Richey*). In *Pearson Dental*, the court considered "the proper standard of judicial review of arbitration awards arising from mandatory-arbitration employment agreements that arbitrate claims asserting the employee's unwaivable statutory rights." (48 Cal.4th at p. 679.) The arbitrator's award in that case "did not even comply with the requirements . . . that 'an arbitrator in a FEHA case must issue a written arbitration decision that will reveal, however briefly, the essential findings and conclusions on which the award is based.'" (*Ibid*.) "[A]s a result of the arbitrator's clear legal error, plaintiff's claim was incorrectly determined to be time-barred." (*Ibid*.) The court stated, "[A]n arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on such right has exceeded his or her powers within the meaning of Code of

Civil Procedure section 1286.2, subdivision (a)(4), and the arbitrator's award may properly be vacated." (*Id.* at p. 680.)

Richey, also an employment case, emphasized the "limited application" of *Pearson Dental*, and stated that the "error addressed in *Pearson Dental* . . . kept the parties from receiving a review on the merits. Its narrow rule was sufficient to resolve the case." (*Richey*, 60 Cal.4th at p. 918.) The *Richey* court stated that it was not expanding the scope of review established in *Pearson Dental*: "Plaintiff here has not advocated for a greater scope of judicial review in cases involving unwaivable statutory rights, and thus, there is no reason to go beyond the framework *Pearson Dental* established." (*Ibid.*)

None of these cases support the position Feld advocates: expanded review of an arbitration award where one of the issues that arises at arbitration touches upon a public policy question. This is not a situation such as those in *Sheppard Mullin* or *Ahdout*, where one party challenges the entire agreement between the parties. This is also not a situation such as those in *Pearson Dental* and *Richey*, in which employees' unwaivable statutory rights were affected by arbitration. Cases are not authority for issues not decided. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) Even considered together, these cases do not create a generally applicable public policy exception to the limitations on the review of arbitration awards in section 1286.2. Thus, we do not find that the trial court erred by failing to apply a different standard in reviewing the arbitration award.

C. The arbitrator addressed all issues presented.

Feld asserts that the arbitrator failed to consider various discrete issues presented, and therefore violated section 1283.4, which requires that an arbitration award "include a

determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy." We consider each of Feld's contentions below.

1. *Enforceability of the GFA*

Feld asserts that the arbitrator's award was incomplete, because the arbitrator "refused to consider Feld's challenges to the enforceability of the GFA," and "failure to rule on all necessary issues is a statutory ground for vacatur." Feld contends that he "brought a counterclaim to have the GFA declared unenforceable," but the arbitrator did not consider it.

The arbitration award recognized that Feld "requests that the Gradstein Fee Agreement be declared unenforceable as to Yu (but not as to Gradstein) because the Gradstein Fee Agreement is unconscionable, is not in compliance with Rule 3-300 and because of Yu's serious ethical misconduct."[2] The arbitrator found that Feld "fail[ed] to provide any authority to support" his claim that the GFA was unconscionable as to Yu but not as to Gradstein. The arbitrator also found that Feld did not raise the issue in his counterclaim, and because Gradstein Marzano had not been joined as a party to the arbitration, "the Arbitrator has no authority to find the Gradstein Fee Agreement unenforceable." The arbitrator therefore "decline[d] to rule that the Gradstein Fee Agreement is unenforceable."

In affirming the award, the trial court noted that the arbitration award "specifically addresses [Feld's] GFA claim. Thus, the arbitrator considered [Feld's] claim related to the GFA and declined to rule that the GFA was unenforceable."

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[2]In his closing brief to the arbitrator, Feld stated, "Obviously, the Arbitrator can only declare the GFA unenforceable with respect to Yu, and not Gradstein."

Feld's opening brief focuses on the arbitrator's reasoning in rejecting Feld's assertions about the GFA. Feld contends that the arbitrator erred on two grounds: by finding that it would be improper to find the GFA unenforceable in an arbitration in which Gradstein Marzano was not a party, and finding that the issue was not properly submitted to the arbitrator. Feld argues that a joinder of Gradstein Marzano was not required, and the matter was properly submitted to the arbitrator.

Feld's criticism of the arbitrator's reasoning does not warrant vacating the award. "As the courts of this state have repeatedly emphasized, the merits of a controversy that has been submitted to arbitration are not subject to judicial review. This means that we may not review the validity of the arbitrator's reasoning, the sufficiency of the evidence supporting the award, or any errors of fact or law that may be included in the award." (*Harris v. Sandro* (2002) 96 Cal.App.4th 1310, 1313.)

Because Feld contends that the arbitration award was incomplete, the relevant inquiry on review is whether "an issue has been submitted to an arbitrator and . . . he totally failed to consider it." (*Rodrigues, supra,* 113 Cal.App.3d at p. 841.) Here, the arbitrator addressed both parties' contentions regarding the effect of the GFA. Yu Leseberg asserted that the YFA controlled certain attorney fees both before and after the Essex litigation; the arbitrator rejected that argument, and held that the GFA controlled *all* attorney fees relating to the Essex litigation. Feld claimed that the GFA was unenforceable as to Yu Leseberg for several different reasons; the arbitrator addressed and rejected each of these claims. Thus, the record does not support Feld's contention that the arbitration award was incomplete because

the arbitrator failed to address either party's contentions about the GFA.

Feld contends that "declining to rule on the enforceability of an agreement" is not a ruling on the agreement. We disagree with this characterization of the arbitrator's written award. Declining to rule in Feld's favor is not the same thing as refusing to consider the issue at all. The arbitrator addressed and rejected Feld's contention that the GFA was unenforceable, and found that the GFA controlled attorney fees relating to the Essex litigation—an issue that needed to be addressed in light of Yu Leseberg's claim that the YFA determined certain fees relating to the Essex litigation. Feld's dissatisfaction with this aspect of the arbitrator's reasoning does not render the award incomplete.

2. *Feld's request for an accounting*

Feld also asserts that the arbitrator failed to consider his request for an accounting of funds due under the GFA. In the award, the arbitrator stated that "the essential information for determining the proper distribution of money (both past and future) recovered as a result of the Essex litigation settlement can be readily determined from" the Essex litigation settlement and the terms of the GFA. The trial court held that this statement demonstrated "the arbitrator implicitly determined that [Feld's] accounting claim was without merit." Feld asserts that the arbitrator erred by simply referring the parties to the GFA, thus failing to consider Feld's accounting claim.

We find no error. Although the arbitrator did not explicitly state that Feld's request for an accounting was denied, a denial is implicit in the arbitrator's findings. A request for an accounting "requires a showing of a relationship between the plaintiff and the defendant, such a fiduciary relationship, that requires an

accounting or a showing that the accounts are so complicated they cannot be determined through an ordinary action at law. [Citation.] 'An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation.'" (*Fleet v. Bank of America N.A.* (2014) 229 Cal.App.4th 1403, 1413.) By finding that the amounts due to Feld were calculable and certain under the GFA, the arbitrator implicitly found that an accounting was not warranted. Feld disagrees with this result, arguing that "Yu continues to hold hundreds of thousands of dollars of Feld's money." Disagreement with the arbitrator's ruling, however, is not a valid basis for vacating the award.

3. *Entitlement to copyrights*

Feld also contends that the arbitrator failed to rule on Yu Leseberg's entitlement to certain copyrights. Feld sought the return of certain copyrights that he alleged Yu misappropriated after he terminated Yu Leseberg. The arbitration award stated, "[Feld's] requests for a declaration that Feld is the owner and administrator of the copyrights are denied as moot in view of [Yu Leseberg's] admission that both the Yu Fee Agreement and the power of attorney have been voided or otherwise revoked and all copyrights and other property interest returned to [Feld]." The trial court stated, "From the award, it is clear the arbitrator considered and ruled on the issue."

Again, Feld argues that the arbitrator reached the wrong result. Feld asserts that Yu only renounced *ownership* in the copyrights, but she did not "disclaim her 100% administration interest," and therefore the arbitrator failed to consider the administration issue. However, Yu Leseberg correctly points out that the arbitrator noted Feld's assertion that he was the "owner

and administrator" of the copyrights, and therefore the arbitrator considered this claim. Feld has not established that the arbitrator failed to reach a decision on this issue, or that the trial court erred by confirming an incomplete award.

4. *The award was sufficiently "definite"*

Feld also contends that the award should not have been confirmed because it was not "definite," and therefore the arbitrator "'imperfectly executed' his powers." Feld asserts that the arbitrator "awarded Yu one[-]third of Feld's 'Future Proceeds' under the GFA, as that term is defined in the GFA." Feld claims that the term "future proceeds" is undefined, pointing to inconsistent terms within the GFA. Feld also asserts that because the arbitrator denied his request for an accounting, "the total sum Yu had collected and was owed to Feld was unknown."

Yu Leseberg argues that this is not a valid basis for vacating an arbitration award under California law. Although he does not cite it, Feld apparently relies on a section of the Federal Arbitration Act, 9 U.S.C. § 10(a), which states in part that an award may be vacated "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." An earlier version of section 1286.2 contained a similar provision (see *Moncharch, supra*, 3 Cal.4th at p. 21), but such language is not included in the current version of section 1286.2. "[A] trial court does not have broad discretion to vacate an arbitration award. The court can vacate such an award only on the grounds authorized by statute." (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 387.) "When determining whether to vacate an arbitrator's award, California state courts do not apply the

Federal Arbitration Act vacatur provisions." (*Countrywide Financial Corp. v. Bundy* (2010) 187 Cal.App.4th 234, 246.)

Even if this were an appropriate challenge to the arbitration award, there is no error. The trial court noted that "the arbitrator did not award any amounts to [Yu Leseberg] under the GFA." Yu Leseberg claimed in arbitration that the YFA controlled part of the attorney fees for copyrights recovered in the Essex litigation. However, the arbitrator rejected that argument and held that the GFA controlled entitlement to all fees relating to the Essex litigation, thus rejecting Yu Leseberg's claim that it was entitled to quantum meruit recovery for that work.

In addition, Feld's arguments on this issue mirror his contentions that the arbitrator should have declared the GFA unenforceable and should have ordered an accounting—contentions we have rejected. To the extent Feld is concerned the parties might fail to comply with the provisions of the GFA in the future, he asserts only speculation about possible future events relating to damages that were not at issue in the arbitration. This is not a valid basis under section 1286.2 to vacate the arbitration award.

D. The arbitrator did not award remedies under the GFA

Feld contends that the arbitrator "issued unauthorized remedies stemming from a contract the arbitrator determined was not before him." Feld asserts, "Having determined that the GFA was not before him, the Arbitrator was not authorized to enforce or rule upon the GFA," but the arbitrator nonetheless ordered Feld to pay Yu Leseberg and Gradstein Marzano

attorney fees from the future proceeds due under the terms of the GFA.

As discussed above, the arbitrator defined the appropriate recovery of fees for Yu Leseberg's fees in part by determining which fees were *not* at issue in the arbitration: attorney fees arising from work related to the Essex litigation, because those fees were encompassed by the GFA. As the trial court found, "[T]he arbitrator did not award any amounts to [Yu Leseberg] under the GFA." Feld asserts that the arbitrator's statement of what the parties owe under the GFA and the judgment's confirmation of that language amounts to "a standing directive to Feld and to Yu." But the arbitrator did not award any fees pursuant to the GFA, he merely stated what the parties had already agreed to under the GFA: "[T]he exclusive basis for attorney's fee[s] for Future Proceeds is the Gradstein Fee Agreement." As Yu Leseberg points out in its respondent's brief, "Merely reciting what [the GFA] provides in the context of an award that expressly declines to rule on the [GFA's] validity does nothing to impact Mr. Feld's rights under [the GFA]." We agree. Feld's contention that the arbitration agreement awards remedies under the GFA is not supported by the record.

E. Attorney fees

The YFA's arbitration and attorney fee provision stated, "Fee Disputes. Any dispute which arises under this agreement shall be submitted for binding arbitration in accordance with the procedures of the Los Angeles County Bar Association, or, if that organization declines to arbitrate the dispute, before the State Bar of California. In the event of a lawsuit between us, the prevailing party shall be entitled to recover their reasonable

attorney's fees." The arbitrator held that Yu Leseberg was entitled to $622,699.51 in attorney fees as prevailing party.

On appeal, Feld asserts that the arbitrator's attorney fee award was unauthorized because the YFA was void in its entirety. He also contends that the arbitrator's fee award and trial court's confirmation "effectively upholds an illegal contract." He asserts that the trial court was "required to perform an independent analysis to determine whether the arbitrator had jurisdiction under the challenged contract." We have rejected Feld's contentions that the YFA was unenforceable in its entirety, and do not revisit that argument here.

Feld also contends that Yu Leseberg's claims could not "arise under" the YFA because "quantum meruit is not a contractual claim. To the contrary, Yu's quantum meruit claim is incompatible with a contract claim, i.e. a party may only obtain quantum meruit fees if there is *no contract* between them." Yu Leseberg argues that Feld's argument amounts to a contention that the arbitrator's decision was wrong, and therefore this portion of the arbitration award is not reviewable.

We agree that we may not review the arbitrator's determination that Yu Leseberg was entitled to attorney fees relating to the arbitration. "Where, as here, a contract both compels arbitration and awards attorney's fees to the prevailing party in 'litigation' arising out of the contract, the attorneys' fee provision applies to the arbitration." (*Harris v. Sandro, supra*, 96 Cal.App.4th 1310, 1314.) When the parties have submitted the issue of attorney fees to the arbitrator—as they did here—"the arbitrator had the power to decide the entire matter of recovery of attorney fees. The recovery or nonrecovery of fees being one of the 'contested issues of law and fact submitted to the arbitrator

for decision' (*Moncharsh, supra*, 3 Cal.4th at p. 28), the arbitrator's decision was final and could not be judicially reviewed for error." (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 776.) We therefore do not review the arbitrator's determination that Yu Leseberg was entitled to attorney fees.

DISPOSITION

The judgment is affirmed. Yu Leseberg is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

DUNNING, J.*

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* Retired Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.